

8.0 CONCLUSIONS AND RECOMMENDATIONS

8.1 CONCLUSIONS

Major conclusions of studies conducted to date are:

- The tentatively recommended plan is economically feasible.
- The prospective non-Federal sponsor fully supports the project. The non-Federal sponsor has purchased the BMK V parcel in anticipation of project implementation.
- The Financial Analysis completed for the HWRP indicates that the non-Federal sponsor is financially capable of participating in the selected plan.
- The non-Federal sponsor fully understands the cost-sharing requirements for project construction and the responsibility for operation, maintenance, rehabilitation, relocation, and repair for the project.
- The tentatively recommended plan fully meets the Federal and non-Federal sponsor's ecosystem objectives.

8.2 RECOMMENDATIONS

In making the following recommendation herein, I have considered all significant aspects in the overall public interest, including environmental, social and economic effects; engineering feasibility; and regional needs.

I recommend that the expansion of the wetland restoration project at the Hamilton Army Airfield, City of Novato, Marin County, California, as described herein, be reauthorized for implementation as a Federal project. I recommend that the project be reauthorized subject to cost sharing as required by Public Law 99-662, the Water Resources Development Act of 1986, as amended. The total first cost of the combined project is currently \$141,700,000 under fourth quarter 2001 prices. The Federal share is currently estimated at \$106,100,000. The non-Federal share is currently estimated to be \$37,400,000. This represents an increase of \$78,500,000 over the authorized project cost of \$55,200,000, updated to 2001 prices at \$63,200,000. I recommend that the Corps of Engineers participate in cost-shared monitoring and minor modifications may be required to ensure the success of the project, as identified by the success criteria outlined within the Operations, Maintenance, Repair, Rehabilitation, and Replacement Plan.

My recommendation is subject to cost-sharing, financing, and other applicable requirements of Federal and State laws and policies, including Public Law 102-580, Section 204, the Water Resources Development Act of 1992, and in accordance with the following requirements which

the non-Federal sponsor shall agree to perform, prior to project implementation, the following items of local cooperation:

a. Provide all lands, easements, and rights-of-way and perform or ensure the performance of all relocations determined by the Federal Government to be necessary for the construction, operation, and maintenance of the project;

b. Provide all lands, easements, and rights-of-way to enable the proper placement of dredged or imported material for wetland restoration and operation, maintenance, repair, replacement, or rehabilitation of the project;

c. Provide during construction any additional amounts as are necessary to make its total contribution equal to 25 percent of total project costs assigned to wetland restoration;

d. Provide during construction any additional amounts as are necessary to make its total contribution equal to 50 percent of total project costs assigned to recreation;

e. Enter into an agreement which provides, prior to construction, 25 percent of preconstruction, engineering and design (PED) costs.

f. Provide during construction, any additional funds needed to cover the non-Federal share of PED costs.

g. Assume responsibility for operating, maintaining, replacing, repairing, and rehabilitating (OMRR&R) the project or completed functional portions of the project without cost to the Federal Government in a manner compatible with the project's authorized purpose and in accordance with applicable Federal and State laws and specific directions prescribed by the Federal Government in the OMRR&R manual and any other subsequent amendments thereto. This provision shall not preclude the Non-Federal Sponsor from accomplishing the OMRR&R of the Project through the services of a willing agency, such as the U.S. Fish and Wildlife Service, following assumption of these obligations. However, absent any modification to the Non-Federal Sponsor's OMRR&R responsibilities through written amendment to the Project Cooperation Agreement, the Non-Federal Sponsor shall remain primarily responsible, as between the Non-Federal Sponsor and the Government, for performance of OMRR&R of the Project.

h. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor now or hereafter owns or controls for access to the project for the purpose of completing, operating, maintaining, repairing, replacing, inspection, and, if necessary after failure to perform by the non-Federal sponsor, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall operate to relieve the non-Federal sponsor of responsibility to meet the non-

Federal sponsor's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance;

i. Hold and save the United States free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the United States or its contractors;

j. Prevent future encroachments on the project lands, easements, and rights-of-way which might interfere with proper functioning of the project;

k. Provide 25 percent of that portion of total cultural resource preservation, mitigation and data recovery costs attributable to wetland restoration that are in excess of 1 percent of the total amount authorized to be appropriated for wetland restoration;

l. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way required for the operation, maintenance, repair, replacement, and rehabilitation of the project, including those necessary for relocations, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act;

m. Comply with all applicable Federal and State laws and regulations including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army;"

n. Keep, and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 Code of Federal Regulations (CFR) Section 33.20;

o. There are ongoing and potential future remediation activities, including Comprehensive Environmental Response Compensation and Liability Act (CERCLA) covered actions, on the property necessary for the wetland project being conducted by the Department of the Army under the Base Realignment and Closure and Formerly Used Defense Sites programs. The performance and payment for these remediation activities will not be the responsibility of the Civil Works program of the U.S. Army Corps of Engineers or the non-Federal sponsor, except to the extent the pertinent Project construction activities principally accomplish design objectives in direct performance of the Project's ecosystem restoration functions, and only incidentally result in the accomplishment of the remediation objectives of other components of

the Federal Government. All such other activities that are not conducted principally to accomplish ecosystem restoration functions, including funding, will be the responsibility of other parts of the Federal Government, as required by the applicable law.

p. As between the Government and the Non-Federal Sponsor, the Government shall be considered the operator, for the purposes of CERCLA liability, of those parcels comprising the Project on which there are ongoing or potential future remediation activities conducted by the Department of the Army under the Base Realignment and Closure and Formerly Used Defense Sites programs, until such time as the Non-Federal Sponsor is obligated to assume OMRR&R responsibilities over the Project or a functional portion thereof; following such assumption of responsibilities, as between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project or a functional portion of the Project for purposes of CERCLA liability. For all parcels comprising the Project on which there are no ongoing or potential future remediation activities conducted by the Department of the Army, as between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project or a functional portion of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project or a functional portion of the Project in a manner that will not cause liability to arise under CERCLA.

The recommendations contained herein reflect the information available at this time and current Departmental policies governing formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of a national Civil Works construction program nor the perspective of higher review levels within the Executive Branch. Consequently, the recommendations may be modified before they are transmitted to the Congress as proposals for authorization and implementation funding. However, prior to transmittal to the Congress, the sponsor, the State, interested Federal agencies, and other parties will be advised of any modifications and will be afforded an opportunity to comment further.

Date

Timothy S. O'Rourke
Lieutenant Colonel, Corps of Engineers
District Engineer